

and death sentence. *Id.* at 477. The Alabama Supreme Court denied certiorari, *see Ex parte Smith*, No. 1011228 (Ala. June 28, 2002), as did the United States Supreme Court, *see Smith v. Alabama*, 537 U.S. 1090 (2002) (mem.).

Smith then proceeded with both state post-conviction and federal habeas proceedings. On July 2, 2020, the United States Supreme Court denied certiorari as to Smith's habeas claims, thereby concluding Smith's appeals. *See Smith v. Dunn*, No. 19-7745, 2020 WL 3578738 (July 2, 2020) (mem.).

On November 25, 2019, Smith filed his first § 1983 complaint in the Middle District of Alabama alleging both method-of-execution and Americans with Disabilities Act claims.¹ After oral argument, that case was dismissed without prejudice.² On the same day that Smith's initial § 1983 suit was dismissed, Smith filed the present action.

B. The ADOC's Change to its Execution Protocol

Historically, Holman's Christian chaplain—an ADOC employee—was a member of the prison's execution team. (Doc. 27-6, p. 7.) Prior to April 2019, the ADOC's execution protocol required the chaplain's presence inside the execution

⁴ On December 1, 2020, while Smith's initial § 1983 case was ongoing, the Alabama Supreme Court issued a death warrant, scheduling Smith's execution on February 11, 2021.

⁵ *Smith v. Dunn*, Case No. 2:19-cv-927 (M.D. Ala. Dec. 14, 2020), Doc. 25. As of the date of this order, Smith has amended his complaint in this initial § 1983 case and the ADOC has filed a motion to dismiss, which remains pending.